

**Internal Revenue Service**

**Department of the Treasury**

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: [REDACTED]

AUG 21 1996

Employer Identification Number: [REDACTED]

Key District: Western (Los Angeles, CA)

Form: 1120

Tax Years: all

Dear Applicant:

This letter constitutes a final adverse ruling with respect to your claim of exemption from federal income taxation under section 501(c)(13) of the Internal Revenue Code.

We make our ruling for the following reason(s):

We have considered the representations that you made during our conferences of [REDACTED], and [REDACTED] and those contained in your post-conference submissions. The following facts and representations are contained in the administrative file.

Your activities include: (1) attracting members; (2) arranging for cryogenic preservation and cryogenic interment; (3) arranging for the perpetual care of interred members; and (4) arranging for the potential re-animation of your Cryogenically interred members.

You hire outside companies to cryopreserve and maintain the cryogenic crypts that the interred members are stored in. Cryogenic interment is a process by which the legally dead, but biologically viable body of a person, who has been ill or injured, is preserved at low temperatures until such time as medical science may be capable of reviving the person. Cryogenic preservation is similar to the preparation of bodies prior to a traditional burial.

Your members are required to complete and execute a booklet of applications and contracts (hereinafter, the "documents"). The first document of that booklet provides that you have assumed the responsibility for your Member's cryopreservation. The third document indicates that you allow your members to choose whole body cryopreservation or neuro-cryopreservation. The document provides for various methods of disposal of non-cryopreserved

[REDACTED]

portion of human remains. The fourth document called a Cryopreservation Agreement provides, in part, that the Client's intention is to have his/her human remains cryopreserved and placed under long-term cryogenic care by [REDACTED] in the hope of possible restoration to life at some time in the future. In addition, your members are required to execute a Consent for Cryopreservation. The Consent specifically authorizes "[REDACTED] its agents, assistants, associates, employees, and physicians to provide and perform the experimental procedure of post-mortem cryogenic preservation . . . ."

In your letter of [REDACTED], you contend that the intent behind section 501(c)(13) of the Code is to provide an exemption to any company which provides a repository for human remains. In addition, you assert that your activities do not constitute the impermissible operation of a mortuary because several outside companies perform the various stages of cryopreservation for you.

In your letter of [REDACTED], you represent that you have entered into a lease, of not less than 30 years, with [REDACTED], a [REDACTED] corporation with offices in [REDACTED]. The terms of the lease permit you to use a portion of a warehouse for long-term cryogenic interment. You contends that this amounts to a permanent location for the bodies akin to a traditional cemetery.

Section 501(c)(13) of the Code provides for an exemption to cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

The word "bury" is defined in the American Heritage Dictionary (Second College Edition, 1982) as the placing a dead body in a grave or a tomb. The American Heritage Dictionary defines the word "warehouse" as a place where goods or merchandise are stored. A warehouse is neither a grave nor a tomb and merely placing a dead body in a warehouse for a term of thirty years does not constitute a burial.

In addition, one of your stated purposes is to re-animate your members' bodies. This requires placing dead bodies in storage for the purposes of restoring such bodies to life at some point in the future. Significantly, your contracts expressly provide for the disposal of remains that are not cryopreserved.

Therefore, your cryogenic interment activities are not tantamount to the disposing of bodies.

Moreover, there is no indication that Congress intended to exempt cryogenic interment activities from taxation. Exemptions are a matter of legislative grace and a taxpayer seeking an exemption must show it comes squarely within the terms of the law conferring the exemption sought. Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958). In 1970 Congress amended section 501(c)(13) of the Code to widen the exemption to include cremation. Your supporting documents indicate that cryogenic interment was practiced as early as 1967. Thus, the presumption exists that Congress did not intend to provide an exemption for cryogenic interment companies. Under the law as it is written today, cryogenic interment is not an activity permitted under section 501(c)(13) of the Code.

Rev. Rul. 64-109, 1964-1 C.B. 190 holds that the operation of a mortuary by a cemetery company precludes exemption under section 501(c)(13) of the Code. The holding of the Revenue Ruling is based upon the premise that mortuary services are most often provided by independent funeral directors and are not "necessarily incident" to cemetery purposes. This theory is consistent with the laws in [REDACTED]. Under [REDACTED] law the terms "mortician" and "funeral director" are used interchangeably and the services of such include "preparing for the transportation or burial or disposal of dead human bodies." Cal. Bus. & Prof. Code § 7615 (1995).

Cryogenic preservation prepares the body for cryogenic interment. Your representations indicate that you concede that the cryogenic preservation is akin to mortuary services. The administrative file indicates that you are, in fact, extensively involved the cryogenic preservation activities, both directly and indirectly. However, you contend that because you hire outside companies to provide the preservation services, you are not engaging in activities akin to mortuary services.

This argument fails for two reason. Clearly, these outside companies, based upon the contents of the various contracts described above, are acting as your agents. Because these outside companies are your agents, the cryopreservation activity conducted by them is attributable to you. Moreover, under section 501(c)(13) of the Code it is not permissible for a cemetery company to arrange for the provision of mortuary services to its members. Thus, even if the cryopreservation services provided by outside companies are not attributed to you,

it is you who makes the arrangements that enable your members to use their services.

Consequently, you do not meet the requirements of section 501(c)(13) of the Code because your activity of cryogenic interment does not constitute the "disposal of bodies by burial or cremation" within the meaning of section 501(c)(13). Furthermore, your activity of cryogenic preservation, or the arranging for the cryogenic preservation of your members, is a business not necessarily incident to the "disposal of bodies by burial or cremation" within the meaning of section 501(c)(13).

Contributions to you are not deductible under section 170(c)(5) of the Code. The Code and the regulations issued thereunder require that you file federal income tax returns. Based upon the financial information that you furnished, you should file returns on the form and for the tax years indicated above within 30 days from the date of this letter with your key District Director for exempt organization matters, shown above, unless you request and your key District Director grants an extension of time to file the returns. You should file returns for later tax years with the appropriate service center indicated in the instructions for those returns.

If you have any questions concerning the reasons for this ruling, please contact the person whose name and telephone number appear in the heading of this letter. You should address questions concerning the filing of returns to your key District Director.

Sincerely,

  
Edward

  
Chief, Exempt Organizations  
Technical Branch 3

[REDACTED]

cc: D.D. Western (Los Angeles, CA)  
Attn. EP/EO Group

[REDACTED]

[REDACTED]

Form 1937-A	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
CODE	[REDACTED]	[REDACTED]	[REDACTED]			
Surname						
Date	08/20/96	08/20/96	08/21/96			